

Court of Appeals, State of Michigan

ORDER

People of MI v Averia McKensy Welch

Docket No. 296186

LC No. 08-012770-AR

Kurtis T. Wilder
Presiding Judge

Brian K. Zahra

Kristen Frank Kelly
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the January 13, 2010, order of the Wayne Circuit Court hereby is REVERSED. The facts presented to this Court do not suggest that any additional videotape recording of the events leading to defendant's arrest existed. Defendant has not shown that the prosecution was withholding additional discovery. The police and prosecution cannot be compelled to produce evidence that does not exist and the district court thus abused its discretion in dismissing the charges. In contrast to *People v Davie (After Remand)*, 225 Mich App 592; 571 NW2d 229 (1997), the prosecution here was inappropriately sanctioned, where it provided the pertinent videotape. The case is REMANDED for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

Date

Sandra Schultz Mengel
Chief Clerk